

2010 WL 3443967 (Ark.App.) (Appellate Brief)  
Court of Appeals of Arkansas.

Charles E. SKOMP, Appellant,  
v.  
STATE OF ARKANSAS, Appellee.

No. CACR 09-1171.  
March 1, 2010.

An Appeal from the Bradley County Circuit Court the Honorable Samuel B. Pope Circuit Judge

**Brief of Appellee**

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**\*i TABLE OF CONTENTS**

TABLE OF CONTENTS .....	i
POINT TO BE RELIED UPON .....	ii
TABLE OF AUTHORITIES .....	iii
ARGUMENT .....	1
CONCLUSION .....	14

**\*II POINT TO BE RELIED UPON**

**I.**

**SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT'S CONVICTION FOR ABUSE OF AN ENDANGERED OR IMPAIRED PERSON ..... 1**

**\*iii TABLE OF AUTHORITIES**

**CASES**

<i>Dunn v. State</i> , 371 Ark. 140, 264 S.W.3d 504 (2007) .....	2
<i>Echols v. State</i> , 344 Ark. 513, 42 S.W.3d 467 (2001) .....	10
<i>Hutcheson v. State</i> , 92 Ark. App. 307, 213 S.W.3d 25 (2005) .....	2
<i>Law v. State</i> , 375 Ark. 505, 292 S.W.3d 277 (2009) .....	10, 11
<i>Ruffin v. State</i> , 83 Ark. App. 44, 115 S.W.3d 814 (2003) .....	10
<i>Spight v. State</i> , 101 Ark. App. 400, 278 S.W.3d 599 (2008) .....	2
<i>Watson v. State</i> , 358 Ark. 212, 188 S.W.3d 921 (2004) .....	14
<i>Williams v. State</i> , 338 Ark. 178, 992 S.W.2d 89 (1999) .....	9

**STATUTES**

Ark. Code Ann. § 5-28-101(1)(A-D) .....	10, 12
Ark. Code Ann. § 5-28-101(11)(B) .....	10
Ark. Code Ann. § 5-28-101(3) .....	11
Ark. Code Ann. § 5-28-103(a) (Repl. 2006) .....	2, 10
Ark. Code Ann. § 5-28-103(b)(10) .....	3
Ark. Code Ann. § 5-28-103(b)(2) .....	3

**RULES**

Ark. R. Crim. P. 33.1(a) .....	9
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**\*1 ARGUMENT****I. SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT'S CONVICTION FOR ABUSE OF AN ENDANGERED OR IMPAIRED PERSON.**

A jury convicted appellant of abuse of an endangered or impaired person as a Class D felony, and he was sentenced to a term of 72 months in the Arkansas Department of Correction. (T. 43; Add. 3) Appellant was tried along with three other persons for the abuse of a victim who, it appears, was his step-sister. The defendants were all represented by separate counsel. It appears that defendants Curtis Klines and Susie Klines are married. The victim, Brenda Klines, is Curtis's daughter by his first marriage. (T. 422-423; A. 40) Appellant and defendant Steven Skomp, apparently, are Susie's sons by a prior marriage and, thus, Brenda's step-brothers.<sup>1</sup>

**\*2** A directed-verdict motion is a challenge to the sufficiency of the evidence. *E.g.*, [Hutcheson v. State](#), 92 Ark. App. 307, 313, 213 S.W.3d 25, 29 (2005). On appeal, this Court reviews the evidence in the light most favorable to the State, considering only the evidence that supports the conviction. *E.g.*, [Spight v. State](#), 101 Ark. App. 400-401, 278 S.W.3d 599, 600 (2008). This Court will affirm a conviction if there is substantial evidence to support it, which is evidence of sufficient force and character that it will compel a conclusion with reasonable certainty. *Id.* Because a criminal defendant's intent can seldom be proven by direct evidence, it must usually be inferred from the circumstances surrounding the crime. *Id.* Jurors are allowed to draw upon their common knowledge and experience to infer it from the circumstances, and it is presumed that a person intends the natural and probable consequences of his or her acts. *Id.* Determinations of credibility are left to the jury. *E.g.*, [Dunn v. State](#), 371 Ark. 140, 147, 264 S.W.3d 504, 508 (2007). The jury may resolve questions of conflicting testimony and inconsistent evidence and may choose to believe the State's account of the facts rather than the defendant's. *Id.*

Appellant was convicted under [Ark. Code Ann. § 5-28-103\(a\)](#) (Repl. 2006), which provides:

It is unlawful for any person or caregiver to abuse, neglect, or exploit any endangered person or **\*3** impaired person subject to protection under a provision of this chapter.

The offense is a Class B felony if the abuse causes serious physical injury or a substantial risk of death. [Ark. Code Ann. § 5-28-103\(b\)\(10\)](#). It is a Class D felony if the abuse causes physical injury. [Ark. Code Ann. § 5-28-103\(b\)\(2\)](#). Here, the trial judge granted a directed verdict with respect to the offense as a Class B felony because there was no evidence that Brenda sustained a serious physical injury, but he found there was a jury question as to whether the defendants had committed a Class D felony. (T. 451; A. 48-49)

Mark Wargo, a psychological examiner with the Southeast Arkansas Human Development Center, testified that he evaluated Brenda Klines on May 1, 2008. He determined that she was moderately mentally retarded. On the Wechsler Adult Intelligence Scale, her verbal IQ was 51, performance IQ was 53, and full-scale IQ was 48. Those scores put her at about the .1 percentile of the general population. In other words, 999 of 1000 persons would function at a higher level than she. Wargo stated that Brenda functioned at the second-grade level and had the independence level of someone who was age seven years, eight months. (T. 242-244; A. 4) On cross-examination, Wargo stated that Brenda was 49 years old when he examined her. (T. 250; A. 5)

**\*4** Jeremy Chapman, an officer with the Warren Police Department in April and May 2008, testified that he was called to the hospital with regard to injuries that Brenda had sustained. He contacted the Department of Human Services. (T. 229-230; A. 1) Chapman went to the defendants' house with a DHS investigator and heard Steven Skomp state that, to punish Brenda for getting his candy or cell phone, they would make her stand against a wall on her tiptoes and stretch her arms out as far as she could. Chapman confiscated a piece of wood and a belt that were on the coffee table. (T. 233-234; A. 1-2)

Investigator Shawn Hildreth of the Warren Police Department interviewed Susie Klines, who told him that they would make Brenda stand against the wall on one leg, for up to two hours, as punishment for taking food and not cleaning the house thoroughly. As an example, she said that punishment would be used if Brenda did not mop the floors properly. Hildreth testified that he tried to stand on one leg for a long period of time to see what it was like, and he developed cramps after only 13 minutes. Susie also told Hildreth that Brenda was a borderline diabetic, so they had to prevent her from “stealing” sweets. The family also made Brenda sleep in a camper trailer near the house, telling her that she was locked inside it in order to keep her from stealing food. (T. 268-269; A. 8-9)

\*5 Hildreth interviewed appellant, who stated that he never abused Brenda. He admitted, however, that he had made her stand in the corner facing the wall and locked her in the camper as punishment for talking back and “stealing” his food for “reverse” diabetes. Appellant told Hildreth that Brenda had a “smart mouth” and “talked back” to her father. As to Brenda stealing the food, appellant said that he was “frustrated” with it and told his mother that “something was doing to have to be done or he was going to do something.” They then bought the trailer and moved Brenda into it. Hildreth Mirandized appellant when he interviewed him, and appellant agreed to talk to him. (T. 272-273; A. 10-11) All of the defendants admitted to Hildreth that the trailer had neither plumbing nor electricity. Brenda used a five-gallon bucket as a toilet, and a box fan in the trailer was powered by an extension cord that ran from the house to the trailer. (T. 275-276; A. 11)

Denise Smith, an adult-abuse investigator with the Department of Human Services, testified that she and another investigator were called to the hospital in Warren after Brenda was admitted there. Brenda was malnourished, and she had bruises “from head to toe.” Her ears appeared to be swollen “from the inside out.” (T. 312; A. 16) At the defendants' house, Curtis Klines told Smith that Brenda had fallen on Sunday morning. He also \*6 told Smith that Brenda was on a special diet because of her blood sugar and blood pressure. (T. 326-327; A. 18-19) Curtis said that they disciplined Brenda by “whupping” her, the same way they “whupped” their cat. Smith saw a belt and a ruler-sized board on a table. Curtis said they used those items to discipline the cat for scratching the furniture, although Smith stated that the furniture had “no scratches on it whatsoever.” (T. 328-329; A. 19) Susie Klines also denied that they hit Brenda with the belt and board, but admitted that they made her stand in the corner for stealing food and not doing her chores. Susie said that Brenda had a bad attitude, would steal things, was out of control, and was angry at them. Susie said that Brenda made marks on herself with sharp objects. (T. 330-331; A. 20)

Smith testified that the refrigerator in the trailer was empty, and the bathroom door was screwed shut and could not be opened. The breaker switches were off, so the trailer had no electricity. The gas stove in the trailer did not have knobs or cooking grates. The box fan was the only way to cool the trailer. (T. 333-334; A. 21) A padlock was on the door. (T. 337; A. 23) Appellant and Steven Skomp arrived while Smith was at the house. Appellant told Smith that he would make Brenda stand in a corner on her tiptoes while reaching toward the ceiling. (T. 339-340; A. 23)

\*7 Dr. David Foscue testified that he had been Brenda's primary-care physician since 2001. (T. 398; A. 36) He saw her at the hospital in Warren in May 2008 and was “shocked” by her appearance. Brenda first told Dr. Foscue that she had fallen (T. 379; A. 29), but Dr. Foscue said that her injuries could not have been caused by a fall. (T. 383; A. 30) As Brenda continued to talk, she told the doctor that she lived in a trailer next to the house and had a bucket that she used as a toilet. She had to clean the bucket and claimed that she somehow fell while doing that. (T. 384; A. 31) When Dr. Foscue told her that she could go home the next day, she replied that she did not want to go home, but that she wanted to stay in the hospital for a few days. He asked her if she was afraid to go home, and she said she was because she did not want to get a “whupping” when she got home. (T. 386-387; A. 32) She told him that she had previously been whipped with a belt and a paddle by both “Mamma and Daddy,” and that her last whipping occurred just a week earlier. Brenda also told the doctor that the brothers sometimes held her feet down and whipped her with a paddle, and that Susie or Curtis spanked the bottoms of her feet with a paddle. (T. 388-389; A. 33)

Dr. Foscue testified that injuries to Brenda's ears were “very fresh,” occurring perhaps within the past 24 hours. The coloring of bruises on the bottoms of her feet was consistent with Brenda's statement that her feet had \*8 last been spanked a week earlier. A bruise on her lower back was consistent with her having been struck there. (T. 390-391; A. 34) She also had bruising on her legs, including under her right knee. Injuries on her neck could have been caused by choking, by being struck there, or

by something being scraped across her neck. The neck injuries were not caused by a fall because a falling person would not hit that part of the neck. Dr. Foscue explained that the areas near the neck that could be injured in a fall had no bruising, so he was convinced that her injuries were not caused by a fall. For similar reasons, Dr. Foscue opined that bruises around both of her eyes were not caused by a fall. (T. 392-393; A. 34-35) He described her ears as “cauliflower ears” due to the degree of swelling and stated that the bilateral ear injuries were not caused by a fall. (T. 394; A. 35) Dr. Foscue testified that Brenda is not diabetic, although she has slight hypoglycemia, or low blood sugar, which can be caused by skipping meals or not eating properly. (T. 401-402; A. 36)

Brenda's sister, Louise Pitt, took Brenda home with her from the hospital. (T. 424; A. 40) At that time, Brenda could barely hear. The damage to her ears was still visible, and she continued to have headaches at the time of the trial. (T. 429; A. 42) When Brenda arrived at Pitt's home, she would “jump” when someone came to the door, she woke up crying with \*9 nightmares, was constantly “terrified,” and would not even speak to Pitt for several days. (T. 424; A. 40)

At the close of the State's evidence, appellant adopted the directed-verdict motion made by Steven Skomp, which asserted that the State had failed to prove that (1) Brenda was over age 18, (2) she was unable to protect herself from abuse, (3) he was her caregiver, (4) he caused her to sustain serious physical injury or physical injury, (5) he abused her, and (6) he neglected her. (T. 441-445, 447; A. 43-46) Appellant added that there was no evidence that he did anything to Brenda, that he was her caregiver, or that he lived at the house with Brenda and his codefendants. (T. 447-448; A. 47) Appellant rested without presenting any evidence in his own behalf<sup>2</sup> (T. 451-452) On appeal, appellant challenges his conviction under the statute on the bases that the State failed to prove that (1) he was Brenda's caregiver, (2) he abused her, and (3) any actions attributed to him caused her to suffer physical injury. He has abandoned the arguments he made in his \*10 directed-verdict motion but that he does not address on appeal. *See, e.g., Echols v. State*, 344 Ark. 513, 519, 42 S.W.3d 467, 471 (2001).

Appellant first argues that he was not Brenda's caregiver and that the State did not prove that he lived in the household. There is no requirement that he be her caregiver or live there, however. As noted previously, § 5-28-103(a) provides that it is unlawful for “any person *or* caregiver” to abuse an impaired or endangered adult. (Emphasis added.) The use of the disjunctive “or” in a statute indicates an alternative, an either-or choice. *E.g., Ruffin v. State*, 83 Ark. App. 44, 46, 115 S.W.3d 814, 815 (2003). Appellant's argument on this point is based on his misapplication of the Supreme Court's holding in *Law v. State*, 375 Ark. 505, 292 S.W.3d 277 (2009). Whereas this case involves abuse, *Law* concerned the issue of neglect. *Law* was convicted under § 5-28-103(c)(1) for neglecting his elderly mother after she was found living in his home in deplorable conditions. *Id.* at 507-508, 292 S.W.3d at 279. The statutes make a critical distinction between abuse and neglect in terms of who can be held accountable for those two types of adult abuse. Section 5-28-101(1)(A-D) defines “abuse” as consisting of a variety of affirmative, purposeful actions without placing any limits on who can be responsible for committing those acts. Section 5-28-101(11)(B), on the other hand, defines “neglect” as “a purposeful act or omission by a \*11 caregiver responsible for the care and supervision of an adult endangered person or an adult impaired person[.]” (Emphasis added.) Section 5-28-101(3) defines “caregiver” as “a related or unrelated person ... that has the responsibility for the protection, care, or custody of an adult endangered person or adult impaired person[.]” Therefore, it is required that the accused be a caregiver only when neglect is asserted or proven. Otherwise, the offense can be committed by “any person.” The reason for the distinction between abuse and neglect is clear. Whereas anyone can purposely abuse an endangered or impaired person, only a caregiver has a legal duty to protect and provide for an endangered or impaired person and, thus, can be liable for failing to fulfill that duty. Thus, the discussion in *Law* of whether *Law* was his mother's caregiver was based on facts showing that he had neglected her - not that he committed affirmative acts of abuse against her. Here, the State proved that appellant abused Brenda, so whether or not he was her caregiver or lived in the household is irrelevant. *Law*, simply, does not apply to this case.

Appellant next claims that the State failed to prove that he ever abused Brenda. To the contrary, the State presented sufficient evidence of appellant's involvement in the abuse. Appellant told Smith statement that they made Brenda stand in the corner on her tiptoes and reach toward the \*12 ceiling when she would “act up.” (T. 339-340; A. 23) Brenda also told Dr. Foscue that appellant and Steven sometimes held her feet down and hit her with a paddle. (T. 388-389; A. 33) Appellant told Hildreth that he punished Brenda for stealing his food and talking back to her father. He was “frustrated” with her and told his mother that

“something was going to have to be done or he was going to do something.” (T. 272-273; A. 10-11) It was due to appellant, therefore, that Brenda was moved into the trailer, where she was locked inside at night without electricity or plumbing.<sup>3</sup>

Section 5-28-101(1) defines “abuse,” in part, as follows:

(A) Any purposeful and unnecessary physical act that inflicts pain or causes injury to an endangered or an impaired person;

(B) Any purposeful or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm[.]

\*13 Appellant's actions described above were pain-inflicting and demeaning to Brenda. In addition to the numerous physical injuries Brenda suffered, the environment created by appellant and his co-defendants also caused her psychological injury. As Dr. Foscue testified, Brenda was afraid to go home from the hospital because she would be “whupped.” Louise Pitt's description of Brenda's demeanor after she left the hospital showed that Brenda was in constant fear. Appellant's actions contributed to the pain and fear that Brenda experienced, and he was aware of each of those actions, even if he did not consider them to be abuse. The State's proof that appellant abused Brenda was more than sufficient to support his conviction.

Appellant's final basis for claiming the evidence against him was insufficient is that none of his actions caused Brenda physical injury. He does not deny that his actions were demeaning to Brenda. Even so, there was evidence that he hit Brenda with a paddle, or would hold her down while his brother hit her. Also, he admitted that he made her stand on one leg or on her tiptoes for long periods of time. Hildreth testified that he developed cramps after only 13 minutes when he tried to see how long he could stand on one leg. The jurors were permitted to use their common sense and experience to find that appellant's actions of paddling Brenda and forcing her to stand on one leg or on her tiptoes for long periods of time \*14 would cause her pain and be demeaning to her. *E.g.*, *Watson v. State*, 358 Ark. 212, 220, 188 S.W.3d 921, 926 (2004).

### CONCLUSION

For the reasons stated herein and based on the authorities cited, the State respectfully submits that this case should be affirmed in all aspects.

#### Footnotes

- 1 Also pending before this Court are the appeals of codefendants Susie Klines (CACR 09-1207) and Steven Skomp (CACR 09-1185). Those cases are awaiting submission. Appellant's argument on appeal is very similar to the argument made by Steven Skomp in his appeal. Insofar as this Court's docket reveals, Curtis Klines has not filed an appeal from his conviction.
- 2 Although Susie Klines testified in her own behalf, appellant's directed-verdict motion was made at the “close of the case” pertaining to him, as required by Ark. R. Crim. P. 33.1(a), and he was not required to renew it after Susie's testimony. *E.g.*, *Williams v. State*, 338 Ark. 178, 186-187, 992 S.W.2d 89, 95 (1999).
- 3 As to appellant's previous claim that there was no evidence he lived in the household, the State notes that a reason he gave for his abuse of Brenda was that she stole his food. He does not explain why he would store his food at the house within Brenda's reach if, in fact, he lived elsewhere and could keep his food in his own home.